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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,405	09/10/2003	Thami Smires	A-8196. RNFMP/bh	2238

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EXAMINER
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MEINECKE DIAZ, SUSANNA M

ART UNIT	PAPER NUMBER
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3692

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09/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/658,405	<b>Applicant(s)</b> SMIRES ET AL.	
	<b>Examiner</b> Susanna M. Diaz	<b>Art Unit</b> 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 9, 2008 has been entered.

Claims 1-10 are pending.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

3. The declaration filed on March 24, 2008 under 37 CFR 1.131 is sufficient to overcome the Kim reference, especially in light of the claims submitted on July 9, 2008.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites that a credit card server denies a transaction "based upon *date* provided in said database" (lines 3-4). There is no antecedent basis for a date; therefore, it is not clear where the date comes from or what it represents. Alternatively, should the date actually be written as "data"?

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Atomic Software Inc.'s ecomPort payment gateway, as disclosed in the following references:

(a) "ETA Selects MIST to Provide Wireless Terminals at ETA Mid-Year Conference"

(b) "Wireless Payment Gateway Service from Atomic Software"

(c) "Wireless Credit Card Processing for Under \$500.00"

(d) “Electronic Transaction Association to Use MIST Freedom II Terminals at Annual Meeting and Exposition in San Diego”

(e) “Credit-Card Authorization On the Go”

Atomic Software Inc.’s ecomPort payment gateway discloses a system for controlling the processing of credit card and debit card transactions, between various types of point-of-sale terminal devices initiating the transactions transmitted ultimately to a plurality of credit card processors through a plurality of gateway networks, comprising:  
[Claim 1] a credit card server in communication with the plurality of gateways and the credit card processors, said credit card server receiving a credit card or debit card transaction request from the point-of-sale terminal devices through the plurality of gateway networks, said credit card server processing the transaction and sending the transaction to any of the credit processors, said credit card server communicating with the terminal devices indicating the disposition of each of the transactions (“ETA Selects MIST to Provide Wireless Terminals at ETA Mid-Year Conference”: ¶ 4);

a database connected to said credit card server for maintaining and reading information relating to the transactions and the point-of-sale terminal devices (“ETA Selects MIST to Provide Wireless Terminals at ETA Mid-Year Conference”: ¶ 4 – The ability to review transaction detail and batch reports as well as see up to one year of transaction history online implies the existence of a database to store the recited information); and

a transaction manager connected to said credit card server for managing a website allowing the merchant associated with each of the point-of-sale terminal devices to view their respective transactions as well as voiding the transactions (“ETA Selects MIST to Provide Wireless Terminals at ETA Mid-Year Conference”: ¶ 4;

“Wireless Payment Gateway Service from Atomic Software”: ¶¶ 1-4);

[Claim 2] wherein a display is associated with the point-of-sale terminal devices, allowing the merchant to view their respective transactions (“ETA Selects MIST to Provide Wireless Terminals at ETA Mid-Year Conference”: ¶ 4; “Wireless Payment Gateway Service from Atomic Software”: ¶¶ 1-4);

[Claim 3] wherein the respective transactions are viewed in real time (“ETA Selects MIST to Provide Wireless Terminals at ETA Mid-Year Conference”: ¶ 4; “Wireless Payment Gateway Service from Atomic Software”: ¶¶ 1-4);

[Claim 4] wherein at least one of the point-of-sale terminal devices encrypt information transmitted over said gateway networks (“Wireless Payment Gateway Service from Atomic Software”: ¶¶ 1-4; “Wireless Credit Card Processing for Under \$500.00”: ¶ 7 -- Communications conducted throughout the process are secure, which implies that information is encrypted and decrypted among communicating parties);

[Claim 5] wherein said encrypted information is decrypted by said credit card server (“Wireless Payment Gateway Service from Atomic Software”: ¶¶ 1-4; “Wireless Credit Card Processing for Under \$500.00”: ¶ 7 -- Communications conducted throughout the process are secure, which implies that information is encrypted and decrypted among communicating parties);

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[Claim 6] wherein information included in the transaction is authenticated by said credit card server (“Wireless Payment Gateway Service from Atomic Software”: ¶¶ 1-4; “Wireless Credit Card Processing for Under \$500.00”: ¶ 7 -- Communications conducted throughout the process are secure, which implies that information is encrypted and decrypted among communicating parties);

[Claim 8] wherein said credit card server would encrypt at least a portion of the information included in the transactions prior to entering this information in said database (“Wireless Payment Gateway Service from Atomic Software”: ¶¶ 1-4; “Wireless Credit Card Processing for Under \$500.00”: ¶ 7 -- Communications conducted throughout the process are secure, which implies that information is encrypted and decrypted among communicating parties, including prior to settlement of a transaction as part of the payment verification process. The database includes data regarding actual settlement of transactions, thereby implying that stored data is at some point encrypted prior to entering at least a portion of the information included in the transactions prior to entering this information in the database);

[Claim 9] further including a plurality of credit card processors in connection with said credit card server (“ETA Selects MIST to Provide Wireless Terminals at ETA Mid-Year Conference”: ¶ 4; “Wireless Payment Gateway Service from Atomic Software”: ¶¶ 1-4; “Wireless Credit Card Processing for Under \$500.00”: ¶¶ 5, 6).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atomic Software Inc.'s ecomPort payment gateway, as disclosed in the following references:

(a) "ETA Selects MIST to Provide Wireless Terminals at ETA Mid-Year Conference"

(b) "Wireless Payment Gateway Service from Atomic Software"

(c) "Wireless Credit Card Processing for Under \$500.00"

(d) "Electronic Transaction Association to Use MIST Freedom II Terminals at Annual Meeting and Exposition in San Diego"

(e) "Credit-Card Authorization On the Go",

as applied to claims 1-6, 8, and 9 above, in view of Official Notice.

[Claim 7] Atomic Software Inc.'s ecomPort payment gateway does not explicitly disclose that said credit card server denies a transaction if said information included in the transaction is incorrect, based upon data provided in said database; however, Atomic Software Inc.'s ecomPort payment gateway does allow merchants to interactively adjust transactions, including voids and returns ("ETA Selects MIST to

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Provide Wireless Terminals at ETA Mid-Year Conference”: ¶ 4). Official Notice is taken that it was old and well-known in the financial transaction art at the time of Applicant's invention to void a transaction when entered transaction data is incorrect. The Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Atomic Software Inc.'s ecomPort payment gateway such that said credit card server denies a transaction if said information included in the transaction is incorrect, based upon data provided in said database, in order to enable a merchant to void a transaction for which transaction data (including a date) was erroneously entered. Such a practice promotes good customer service and facilitates accurate payments.

[Claim 10] Atomic Software Inc.'s ecomPort payment gateway does not explicitly disclose that said credit card server is provided with a decision table used to decide which of said plurality of credit card processors would receive a particular transaction. However, Atomic Software Inc.'s ecomPort payment gateway does allow merchants to select any of the major credit card processors to process a transaction (“Wireless Credit Card Processing for Under \$500.00”: ¶ 6) and “the ecomPort gateway service routes transactions from the point of sale to the merchant's credit, debit and check processors” (“ETA Selects MIST to Provide Wireless Terminals at ETA Mid-Year Conference”: ¶ 4). Furthermore, Official Notice is taken that it was old and well-known in the financial transaction art at the time of Applicant's invention to access a decision table to determine which payment server to use. Since Atomic Software Inc.'s ecomPort

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payment gateway handles various credit card processors as well as debit and check transactions, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Atomic Software Inc.'s ecomPort payment gateway such that said credit card server is provided with a decision table used to decide which of said plurality of credit card processors would receive a particular transaction in order to facilitate quick and accurate routing of each transaction to the proper processor.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/  
Primary Examiner, Art Unit 3692